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Certificate of Mailing/Transmission (37 C.F.R. § 1.8(a))

[X] Pursuant to 37 C.F.R. § 1.8, I hereby certify that this paper and all enclosures are being deposited with the United States Postal Service as first class mail on the date indicated below in an envelope addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

[ ] Pursuant to 37 C.F.R. § 1.6(d), I hereby certify that this paper and all enclosures are being sent via facsimile on the date indicated below to the attention of Examiner _____ at Facsimile No. _____.

Dated: September 15, 2003

Name of Person Certifying: Peggy Nichols
Printed Name: Peggy Nichols

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kin-Ping WONG

Confirmation No.: 5971

Filing Date: December 13, 2001

Examiner: Lilling, Herbert J.

Serial No.: 10/021,820

Group Art Unit: 1651

Title: COMPOSITIONS CONTAINING AN ACTIVE FRACTION ISOLATED FROM TRICHOLOMA CONGLOBATUM AND METHODS OF USE

Commissioner for Patents
P.O. Box 1450
Arlington, VA. 22313-1450

PETITION FOR A TWO MONTH EXTENSION OF TIME AND RESPONSE TO RESTRICTION REQUIREMENT UNDER 35 U.S.C. § 121

Dear Sir:

On June 13, 2003, a Requirement for Restriction under 35 U.S.C. § 121 was issued by the U.S. Patent and Trademark Office in connection with the above-identified application. A response to the Requirement for Restriction originally was due July 13, 2003. Applicant's undersigned attorney petitions for a Two Month Extension of Time, and authorizes the Office to charge the fee due to the undersigned's Deposit Account. In view of the filing of this Petition and payment of the fee, a response is now due September 13, 2003. However, because September 13, 2003 falls on a Saturday, a response or other action taken the next business day, namely Monday, September 15, 2003, is considered timely under 37 C.F.R. § 1.7. Accordingly this response is timely filed.

Requirement For Restriction Under 35 U.S.C. § 121

Claims 1 to 36 are pending in the subject application. In the restriction issued June 13, 2003, the pending claims were alleged to describe the following independent and district inventions:

I. Group I, claims 1-2, drawn to a compound having a molecular weight of 18kD to about 20kD having characteristics consistent with a protein and a pharmaceutical composition;

II. Group II, claims 3 and 7 drawn to a mixture;

III. Group III, claims 4, 8, 12, 13, 16, and 19, drawn to a process of obtaining an extract of Tricholoma Conglobatum ETCa, ECTb, ATC07alpha or beta, classified in Class 424, 195.15;

IV. Group IV, claims 5, 6, 9, 10, 14, 17, and 20 drawn to an extract prepared by the specific processing of Tricholoma Conglobatum and pharmaceutically acceptable carriers, classified in Class 424 or 514, depending upon the extract per se.;

V. Group V, claims 11, 15, 18, and 21 drawn to a mixture, classified in Class 424 or 514 and numerous subclasses depending upon the extract per se and the additional agent;

VI. Group VI, claims, 22 and 24, drawn to a method of using the extracts of prepared by the specific processing of Tricholoma Conglobatum and pharmaceutically acceptable carriers to inhibit the growth of endothelial cells or vascularization in a tissue, classified in Class 424 or 514, subclasses depending upon the extract per se.;

VII. Group VII, claims 23 and 25, drawn to a method of employing a mixture of extracts of prepared by the specific processing of Tricholoma Conglobatum and pharmaceutically acceptable carriers to inhibit the growth of endothelial cells or vascularization in a tissue, classified in Class 424 or 514, subclasses depending upon the extract per se.;

VIII. Group VIII, claims 26, 30, 31, 32 and 33, drawn to a method of treating a disorder associated with pathological neovasuclarization or endothelial cell growth by using the extracts of prepared by the specific processing of Tricholoma Conglobatum and pharmaceutically acceptable, classified in Class 424 or 514, subclasses depending upon the extract per se. It is noted that the claims must be dependent upon the process per se otherwise

these claims would be considered unsearchable unless the structure of the specific terms are known structures;

IX. Group IX, Claims 27, 28 and 29, drawn to a method of treating a disorder associated with pathological neovasuclarization or endothelial cell growth by using the extracts of prepared by the specific processing of Tricholoma Conglobatum and pharmaceutically acceptable with additional agent(s), classified in Class 424 or 514, subclasses depending upon the extract per se and the agent in the mixture. It is noted that the claims must be dependent upon the process per se otherwise these claims would be considered unsearchable unless the structure of the specific terms are known structures;

X. Group X, claim 34, drawn to a method of screening for a therapeutic agent with an extract selected from the group consisting of specific agents, classified in class 435, subclass 29+;

XI. Group XI, claim 35, drawn to a method of screening which improperly depends upon a closed Markush grouping, classified in Class 435, subclass 29+; and

XII. Group XII, claim 36, drawn to a kit.

Traversal of Requirement for Restriction

In response to the requirement for restriction, Applicant elects, with traverse to prosecute the invention of Group VIII, claims 26, 30, 31 and 33. However, Applicant expressly reserves his right under 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of this application, or an application claiming the benefit of this application under 35 U.S.C. § 120.

Applicant also respectfully traverses the grounds for restriction and requests that examination of Group IV be conducted at the same time as elected Group VIII. There are two criteria for a proper requirement for restriction, namely, (1) the inventions must be independent or distinct, and (2) there must be a serious burden on the Examiner if restriction is not required. Under M.P.E.P. § 808, the Examiner must examine the subject application on the merits even

though it includes claims to distinct inventions, if the search and examination of the application can be made without serious burden.

The Examiner indicated that the invention of Groups VIII and IV are related as a product and process of use. The Office opined that however, the inventions can be shown to be distinct if either or both of the following can be shown: (1) that the process for using the product as claimed can be practiced with a materially different product or (2) that the product as claimed can be used in a materially different process of using that product. In the instant case, the Office alleged that the product as claimed can be employed for different processes.

Applicant traverses on the ground that the process of Group VIII uses the product of Group IV. Accordingly, the Office has not shown how the product can be used in a different process.

Applicant further maintains that restriction between Groups VIII and IV is improper because (1) it would not be a serious burden on the Examiner to search and examine the inventions of Groups III and IV because each is related to the composition and its therapeutic use. Pursuant to M.P.E.P. § 802.1, "independent (i.e., not dependent) means that there is no disclosed relationship between the two or more subjects disclosed, that is, they are unconnected in design, operation or effect . . ." Clearly, there is a disclosed relationship between the compositions of Group IV (product) and by process the use of the product obtained by that process (Group VIII).

Applicant further notes that it would not be a serious burden on the Examiner to search the inventions of Groups VIII and IV together as each invention is classified within the identical class, *i.e.*, classes 424 or 514.

Supplemental IDS

Applicant also encloses a Supplemental Information Disclosure Statement (IDS) and copies of the cited references for consideration and entry into the examination file.

CONCLUSION

No fee, other than the fee for the Two Month Extension of Time is deemed necessary in connection with the filing of this Response. However, if the Patent Office determines that an extension and/or other relief is required, Applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 50-2518**, referencing billing no. **7009702001**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Should a telephone advance prosecution of the subject application, the Examiner is invited to contact the undersigned at (650) 849-4950.

DATE: Sept 15, 2003

Respectfully submitted,

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